

Allan G. Bense, Speaker

Colleges & Universities Committee Meeting

January 10, 2006 Reed Hall, 1:15 pm — 3:15 pm

Allan G. Bense Speaker David Mealor Chair



Florida House of Representatives

Allan Bense, Speaker Colleges & Universities Committee

David Mealor Chair

Larry Cretul Vice Chair

Meeting Agenda Tuesday, January 10, 2006 Reed Hall, 1:15 PM – 3:15 PM

- I. Convening of Meeting and Call to Order
- II. Roll Call
- III. Opening Remarks
- IV. Consideration of the following bills:

HB 205 Student Financial Assistance by Kravitz HB 263 Florida Prepaid College Program by Mealor

- V. Presentation on the State University System
 Dr. Mark Rosenberg, Chancellor
 State University System
- VI. Presentation on the Florida Prepaid College Program Mr. Ted Hoepner, Chairman Florida Prepaid College Board
- VII. Presentation by the Florida Division of Bond Finance Mr. J. Ben Watkins, III, Director
- VIII. Presentation by the Auditor General's Office Mr. Ted Sauerbeck, Audit Manager, Colleges & Universities
- IX. Update on Interim Project
- X. Closing Comments / Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 205 SPONSOR(S): Kravitz

Student Financial Assistance

TIED BILLS:

IDEN./SIM. BILLS: SB 458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Colleges & Universities Committee		Hatfield CH	Tilton 🕖
2) Education Appropriations Committee	·		_
3) Education Council			
4)			
5)			_

SUMMARY ANALYSIS

This bill prohibits a public university or community college from providing any student holding an F-1 or M-1 visa with financial assistance from state funds appropriated directly or indirectly to the institution or tuition or fee revenues generated by Florida residents. Financial assistance does not include compensation paid to students for assistantships or participation in work-study programs.

Such funds must be redirected to provide additional need-based financial assistance to eligible Florida residents. After the unmet need for such residents is fully satisfied without reliance on loans, any funds emaining must be used to provide merit-based financial assistance to eligible Florida residents.

This bill also creates reporting requirements for universities and community colleges.

The Department of Education reports that for the 2003-2004 academic year an estimated \$6.9 million from state funds and tuition and fee revenues would have been redirected to Florida residents enrolled in the State University System and an estimated \$1.3 million would have been redirected to Florida residents enrolled in the Florida Community College system. The Department of Education is currently in the process of gathering updated figures for the 2004-2005 academic year. See FISCAL COMMENTS section for further details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. h0205.CU.doc STORAGE NAME: 10/27/2005

DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates reporting requirements for public universities and community colleges.

Empower families—The bill may give Florida residents previously unable to afford a higher education an opportunity to enroll in a public university or community college; however, this bill may also limit opportunities for foreign individuals or families by eliminating sources of financial assistance. The bill may also have the potential of decreasing the amount of private financial aid funds for Florida residents if institutions redirect such funds to foreign students in order to sustain the population of these students at an institution.

B. EFFECT OF PROPOSED CHANGES:

Background

The Federal Immigration and Nationality Act (Act) governs the admission of all foreigners to the United States. The Act provides two nonimmigrant¹ visa categories for persons wishing to pursue full-time academic or vocational studies in the United States. The "F" visa is reserved for a nonimmigrant wishing to pursue academic studies or language training. The "M" visa is reserved for a nonimmigrant wishing to pursue nonacademic or vocational studies.

Foreign students seeking to study in the United States may enter under an F-1 or M-1 visa provided they meet the following criteria:

- The student must be enrolled in an "academic" educational program, a language-training program, or a vocational program;
- The school must be approved by United States Citizenship and Immigration Services;
- The student must be enrolled as a full-time student at the institution;
- The student must be proficient in English or be enrolled in courses leading to English proficiency;
- The student must maintain a residence abroad which he or she has no intention of giving up;
- The student must have sufficient funds available for self-support during the entire proposed course of study.²
 - Sufficient funds must equal the amount an institution estimates will be needed to cover tuition, room and board, books, and any other living expenses and may be in the form of one or a combination of the following:
 - An affidavit from a person financially sponsoring the student;
 - The student's personal bank account information;
 - Proof of a scholarship received by the student; and

every alien except an alien who is within one of the following classes of nonimmigrant aliens — an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study . . . at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States . . . which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student.

² http://uscis.gov STORAGE NAME:

DATE:

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According to 8 U.S.C. § (a)(15)(F)(i), the term "immigrant" means

Proof of financial aid that the student will be receiving.³

Effect of Bill

Currently, financial assistance for students may be funded from a variety of sources such as state appropriations, indirect state grants distributed through state agencies, federal grants, tuition and fee revenues, and private contributions. Beginning in the 2007-2008 academic year, this bill prohibits a state university or community college from using state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents to provide financial assistance to any student holding an F-1 or M-1 visa.

For purposes of this bill, financial assistance does not include compensation paid to students for assistantships or for participation in work-study programs. Universities use graduate student assistants to support classroom teaching and university research. Both community colleges and universities use work-study students to support academic and administrative institutional functions.⁴

State universities or community colleges that wish to provide financial assistance to students with F-1 or M-1 visas can provide assistantships and work-study programs or use private funds or tuition and fees from non-residents.

By December 31, 2006, each state university and community college must report to the President of the Senate and the Speaker of the House of Representatives the total amount of state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents that was used to provide:

- Financial assistance during the 2004-2005 academic school year to students holding F-1 or M-1 visas and
- Need-based financial assistance during the 2004-2005 academic school year to students classified as residents for tuition purposes.

This bill requires that state funds appropriated directly or indirectly to the institution or tuition or fee revenues generated by Florida residents be redirected to provide additional need-based financial assistance to eligible Florida residents.

The bill defines "eligible Florida resident" to mean a student classified at the time of initial enrollment at a state university or community college as a resident for tuition purposes pursuant to s. 1009.21, F.S. ⁵ This definition prohibits students who become reclassified as a resident for tuition purposes from receiving the redirected aid.

The redirected funds must not be used to reduce or supplant the existing level of funding Florida residents currently receive for need-based financial assistance from state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents. After the unmet need for eligible Florida residents is fully satisfied without reliance on loans, any funds remaining must be used to provide merit-based financial assistance to eligible Florida residents.

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³ Information received from a February 9, 2005, phone conversation with an employee of the Student and Exchange Visitor Program (SEVP), a division of U.S. Immigration and Customs Enforcement (ICE), the largest investigative arm of the Department of Homeland Security (DHS).

⁴ Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 3.

Section 1009.21(2), F.S., to qualify as a "resident for tuition purposes" a person must establish and maintain legal residence in this state for at least 12 months prior to qualification, make a statement as to his or her length of residence in the state, and further establish that such residence is not temporary but rather for the purpose of maintaining a "bona fide domicile".

By July 1, 2008, the state universities and community colleges must also report to the President and the Speaker on the number of Florida residents benefiting from financial assistance as a result of the redirected funds.

In the 2005 Department of Education (DOE) analysis, DOE found that Florida's public postsecondary students were not currently reported by the type of visa, but by student residency. The DOE also indicated that the ability to clearly identify which revenues are used for financial aid to international students would require some administrative and accounting modifications. The extent to which modifications, if any, have been made is not known. The DOE is currently working on providing updated information.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section to provide legislative intent; creates reporting requirements for state universities and community colleges; prohibits use of certain funds to provide financial assistance to certain foreign students; defines the term "eligible Florida resident;" and provides for redirection of funds to provide additional need-based financial assistance to eligible Florida residents.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The DOE reports that for the 2003-2004 school year, an estimated \$6.9 million from state funds and tuition and fee revenues would have been redirected to Florida resident students enrolled in the State University System⁷ and that an estimated \$1.3 million from state funds and tuition and fee revenues

⁶ Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 2-3.

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⁷ In March 2005, the Division of Colleges and Universities provided a spreadsheet noting that the \$6.9M that would have been redirected came from 1,246 students that held an F-1 visa, were enrolled in a state university and received state funding.

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would have been redirected to Florida residents enrolled in the Florida Community College system.⁸ The DOE is currently in the process of gathering updated figures for the 2004-2005 academic year.

If reporting requirements and accounting systems have not yet been modified, then this bill may increase administrative costs due to new reporting requirements and the need to modify accounting systems to capture the information required in the bill. The fiscal impact of these modifications is indeterminate.⁹

According to the DOE 2005 analysis, there would be no increase or decrease in expenditures from this bill; instead, the use of certain funds would be redirected. Florida residents previously unable to afford a higher education may now have the opportunity to receive such education as a result of the redirected funds; however, this bill may limit opportunities for foreign individuals or families by eliminating sources of financial assistance that might otherwise have been received. The bill may also have the potential of decreasing the amount of private financial aid funds for Florida residents if institutions redirect such funds to foreign students in order to sustain the population of these students at an institution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

2. Other:

Equal Protection

Both the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Florida Constitution guarantee equal protection of the laws to "persons," not only to citizens. This bill may raise constitutional concerns under these provisions.

While Congress may, in light of its plenary power over immigration,¹¹ generally make classifications based on citizenship as long as they are not arbitrary and unreasonable,¹² state or local laws which do so are subject to strict scrutiny. Such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest.¹³

It could be argued that the bill meets strict scrutiny requirements because the bill determines that it is a compelling governmental interest to use a portion of the state's resources to expand access to postsecondary education and to reduce student indebtedness. Expanding access and increasing financial assistance not only will encourage Florida residents to pursue postsecondary education, but also will produce economic benefits for the state by increasing the levels of higher educational attainment and earning potential of Florida's citizenry. In addition, it appears to be narrowly tailored to advance the interest of the state in that it only prohibits use of state funds to provide financial assistance to students with an F-1 or M-1 visa, and does not include those students receiving paid

⁸ In April 2005, the Division of Community Colleges & Workforce reported that the \$1.3 million that would have been redirected came from 532 community college students that held an F-1 visa.

Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 3.

¹⁰ Id.

¹¹ See Art. I, s. 8, U.S. Const. ("Congress shall have Power To . . . establish an uniform Rule of Naturalization[.]")

¹² See Mathews v. Diaz, 426 U.S. 67 (1976).

¹³ See Bernal v. Fainter, 467 U.S. 216 (1984).

compensation for assistantships or participation in work-study programs. Such students also may still receive financial assistance via federal and private monies.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

STORAGE NAME: DATE:

h0205.CU.doc 10/27/2005 HB 205 2006

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A bill to be entitled

An act relating to student financial assistance; providing legislative intent to expand access to postsecondary education and reduce student indebtedness; requiring each state university and community college to report information relating to certain funds used to provide financial assistance to certain students; prohibiting the use of such funds to provide financial assistance to specified foreign students; defining the term "eligible Florida resident"; providing for the redirection of funds to provide additional need-based financial assistance to eligible Florida residents; requiring a report by state universities and community colleges; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

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(1) It is the intent of the Legislature to use Section 1. a portion of the state's limited resources to expand access to postsecondary education and to reduce student indebtedness by increasing need-based financial assistance for Florida residents. Expanding access and increasing financial assistance will encourage Florida residents to pursue postsecondary education, which will produce economic benefits for the state by increasing the levels of higher educational attainment and earning potential of Florida's citizenry.

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(2) By December 31, 2006, each state university and community college shall report to the President of the Senate

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and the Speaker of the House of Representatives:

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- (a) The total amount of state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents that was used to provide financial assistance during the 2004-2005 academic year to students holding F-1 or M-1 visas.
- (b) The total amount of state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents that was used to provide needbased financial assistance during the 2004-2005 academic year to students classified as residents for tuition purposes pursuant to s. 1009.21, Florida Statutes.
- (3) Effective for the 2007-2008 academic year and each year thereafter:
- (a) A state university or community college shall not use state funds appropriated directly or indirectly to the institution or tuition or fee revenues generated by Florida residents to provide financial assistance to any student holding an F-1 or M-1 visa.
- (b) The amount of funds reported pursuant to paragraph (2) (a) shall be used by an institution to provide additional need-based financial assistance to eligible Florida residents. If the unmet need for eligible Florida residents is fully satisfied without reliance on loans, any remaining funds shall be used to provide merit-based financial assistance to eligible Florida residents.
- (4) For purposes of this section, "eligible Florida resident" means a student classified at the time of initial

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enrollment at a state university or community college as a resident for tuition purposes pursuant to s. 1009.21, Florida Statutes.

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- (5) Funds redirected pursuant to this section shall be additional funds for need-based financial assistance for eligible Florida residents and shall not be used to reduce or supplant the level of funding for need-based financial assistance for such students.
- (6) For purposes of this section, financial assistance does not include compensation paid to students for assistantships or participation in work-study programs.
- (7) Each state university and community college shall report to the President of the Senate and the Speaker of the House of Representatives by July 1, 2008, the number of Florida residents benefiting from the use of financial assistance provided from the funds redirected pursuant to this section.
- Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 263 SPONSOR(S): Mealor

Florida Prepaid College Program

TIED BILLS:

IDEN./SIM. BILLS: SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Colleges & Universities Committee		Davis (20	Tilton
2) Education Appropriations Committee			
3) Education Council			
4)			
5)			

SUMMARY ANALYSIS

The bill removes a restriction on the types of postsecondary educational institutions in which a qualified beneficiary may use his or her benefits under the Florida Prepaid College Program (Florida Prepaid), deleting the requirement that an accredited independent college or university in the state of Florida be not-for-profit to be eligible for the transfer of benefits.

The bill appears to have no fiscal impact on state or local government and a positive fiscal impact on the private sector. See the FISCAL ANALYSIS section for further details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0263.CU.doc 11/22/2005

DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty- The bill removes the restriction that an accredited independent college or university in the state of Florida be not-for-profit to be eligible for the transfer of benefits, thereby expanding the number of choices available to beneficiaries of the Florida Prepaid College Plan.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Prepaid College Program (Florida Prepaid) is a state program created to encourage families to save for the expenses of higher education. It was established in 1987 to allow Florida residents to pay the cost of higher education in advance at a fixed level and with statutory state guarantee.¹

The program allows the purchaser to establish an account for a beneficiary (the student) and to lock in the future cost of a two-year community college program, a four-year university program, or a combination of two years of each. Local fee and dormitory plans may be purchased in addition to the tuition plans. Account holders may make lump sum or periodic payments. Prices are based on the beneficiary's age and actuarial assumptions about rates of tuition, fee, and dormitory cost inflation and investment return.²

Florida Prepaid is the largest program of its sort in the nation. As of June 2005, the program has sold 1,052,080 contracts.³ Florida Prepaid is administered by the Florida Prepaid College Board (the Board), which is administratively housed in the State Board of Administration (SBA). The SBA provides administrative and investment services and approves the Board's Comprehensive Investment Strategy. Otherwise, the Board operates independently.⁴

Currently, a qualified beneficiary may apply the benefits of an advance payment contract toward:

- An independent college or university that is located and chartered in Florida that is not-for-profit, that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS) or the Accrediting Council for Independent Colleges and Schools (ACICS), and that confers degrees in accordance with s. 1005.02, F.S.;
- An out-of-state college or university that is not-for-profit and is accredited by a regional
 accrediting association and that confers degrees; or
- An applied technology diploma program or career certificate program conducted by a community college listed in s. 1004.02(2) F.S., or a career center operated by a district school board.

Effect of Proposed Changes

The bill removes the requirement that an accredited independent college or university in the state of Florida be not-for-profit to be eligible for the transfer of benefits. The not-for-profit requirement remains in effect for out-of-state colleges and universities.

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¹ See s. 1009.97, F.S.

² See s. 1009.98, F.S.

³ Florida Prepaid College Board

See ss. 1009.971 and 1009.973, F.S.

According to Department of Education and Florida Prepaid representatives, removing the not-for-profit requirement would make 18 additional institutions eligible for the transfer of benefits.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends paragraph (a) of subsection (3) of s. 1009.98, F.S., deleting the requirement that an accredited independent college or university in the state of Florida be a not-for-profit institution to be eligible for transfer of benefits.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a positive fiscal impact on the private sector. The transfer of benefits to an accredited for-profit institution provides contract purchasers with increased flexibility and may increase enrollment at such institutions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 263 2006

A bill to be entitled

An act relating to the Florida Prepaid College Program; amending s. 1009.98, F.S.; deleting the requirement that an independent college or university be a not-for-profit institution to be eligible for transfer of benefits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Florida Prepaid College Program.--

(3) TRANSFER OF BENEFITS TO PRIVATE AND OUT-OF-STATE COLLEGES AND UNIVERSITIES AND TO CAREER CENTERS.--A qualified beneficiary may apply the benefits of an advance payment contract toward:

(a) An independent college or university that is located and chartered in Florida, that is not for profit, that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and that confers degrees

The board shall transfer or cause to be transferred to the institution designated by the qualified beneficiary an amount not to exceed the redemption value of the advance payment contract at a state postsecondary institution. If the cost of registration or housing fees at such institution is less than

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as defined in s. 1005.02.

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the corresponding fees at a state postsecondary institution, the amount transferred may not exceed the actual cost of registration and housing fees. A transfer authorized under this subsection may not exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary. Notwithstanding any other provision in this section, an institution must be an "eligible educational institution" under s. 529 of the Internal Revenue Code to be eligible for the transfer of advance payment contract benefits. Section 2. This act shall take effect July 1, 2006.

House Committee on Colleges and Universities

University Bonding

January 10, 2006

University Bonding and State Financial Management

- Overview of University Debt
- How Debt Incurred
- What Type Facilities Financed
- University Debt Structure and How Debt Secured
- Amount of University Debt Outstanding
- Regarding Debt Issuance by Universities Education Reorganization and Recent Developments
- Recent Events Debt and Financial Management Issues Created By
- Universities Financial Structure
- Reasons Why University Debt Matters to State
- Appropriate Framework for Authorizing and Issuing Debt



Infrastructure Financing Options

Two Ways For Universities to Incur Debt

- Revenue Bonds Issued by State Board of Education ("SBE") and Board of Governors ("BOG") Through the Division of Bond
- Revenue Bonds Issued by Direct Support University Organizations ("DSOs") Affiliated with

Revenue Bond Financed Facilities

- Dormitories
- Parking Garages
- Athletic Facilities
- Healthcare Facilities
- Research Facilities
- Student Activity Facilities

University Debt Structure

- Facilities Financed on a University-by-University Basis Standpoint) (Most Efficient and Cost Effective From Financing
- One Exception: State University System Improvement Revenue Bonds
- Secured by Capital Improvement Fees and Student Building Fees of All Universities
- Revenues Pledged Generated by Facilities Being Financed, i.e., Sales of Auxiliary Enterprises
- Dormitory Fees for Housing Bonds
- Parking Fees for Parking Bonds
- Patient Revenues for Hospital Bonds
- Ticket Sales for Stadium Bonds
- Student Health Fees Evolution to Mandatory Student Fees Rather Than User Fees to Secure Bonds: e.g. Transportation Access Fees,

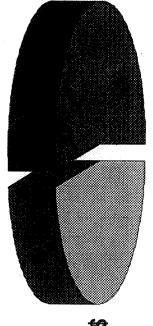
University Debt Outstanding

Total University and DSO Debt

Fiscal Year 2004

\$1.9 Billion

\$1.0 billion or 53%



University
Debt
\$891 million
or 47%

Total University and DSO Debt

DSO Debt
Total

\$ 891 million

University Debt

\$1,009 million \$1,900 million

Education Reorganization

- Board of Regents Abolished (2001)
- Florida Board of Education Created Statutorily (2001)
- Statutorily (2001) Individual University Board of Trustees Created
- Constitutional Amendment Creating Board of Governors Approved (2002)
- State Board of Education Created Statutorily (2003)
- Developments Have Created Confusion Regarding
- Governance of Universities
- Power to Authorize and Issue Debt



University Revenue All Sources

University Revenues

Fiscal Year 2004

(Not Including Component Units)

\$4.7 Billion

\$387.2 million or Revenue Auxiliary

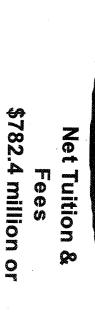
\$168.3 million or

Other

State

Appropriations 40%

Contracts Grants & 32%

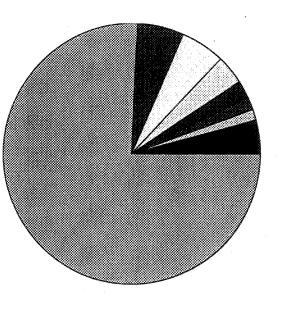




Total Tuition and Student Fees

Estimated Total University Tuition and Fees*

Fiscal Year 2005



□ Capital Improvement Fee	■ Building Fee	■ Med. Prof. Fee	■ Transportation Access Fee	□ Health Fee	□ Athletic Fee	■ Activity & Service Fee	■ Tuition
₩	₩	↔	6	69	€	69	(A
\$ 16.7	ਹੀ ਦ	<u></u>	20.2	39.7	56.6	58.9	\$ 780.4
*	*	*	*	*			

* A Portion of Fee Currently Encumbered, i. e., Pledged to Pay

Less: Scholarship Allowance Estimate

Total Gross Tuition and Student Fees

\$1,031.6

Financial Aid Fee

Total Net Tuition and Student Fees

\$ 937.4

Total All Universities \$ 937.4 million

*Estim Arevenue Amounts Provided by Departme of Education



Reasons University Debt Matters

- University System Historically Part of State
- Significant State Resources Subsidize University Operations and Infrastructure
- Position Certain Types of University Debt Impact State's Debt
- Under Extreme Circumstances University Debt Could Impact State's Credit Rating
- Any Default on University Debt Could Adversely Affect State's Reputation In Credit Markets
- for Any University Bond Defaults Lenders (Bondholders) Likely to Seek State Funding

Framework for Authorization

- Shared Responsibility Among University Board of Trustees, Board of Governors and Legislature
- Legislature Determines Which Revenues Type of Facilities Are Appropriate to Finance Jniversities Can Use to Secure Debt and What
- and Approving Projects and Finance Plan for Board of Governors Responsible for Reviewing University Facilities
- They Should Be Funded Individual University Board of Trustees Determine What Facilities They Need and How

Recommendations

- Establish Definitive Process for Authorizing the Ssuance of Debt
- Require Board of Governors' Review and Approval for the Issuance of Debt for University Projects
- Specify Revenues That Can Be Pledged to Pay Debt Service on Bonds or Other Forms of Indebtedness and Prohibit All Others
- Develop Debt Management Policies for Feasibility Through Board of Governors University Debt and Criteria for Project

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Needed Statutory Clarification Identified in University Audits

Ted Sauerbeck
Audit Manager
487-4468
tedsauerbeck@aud.state.fl.us



Needed	Statutory	Clarifica	ition
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Section 112.061, FS - Travel Law

Issue Needing Clarification:

- Law allows certain entities to establish rates different than s. 112.061, FS, but not universities
- AG audit disclosed that a university has adopted mileage and per diem rates different than those specified in s. 112.061, FS

Recommendation:

 Revise law to clarify whether universities must adhere to rates specified in s. 112.061, FS

Needed Statutory Clarification

Chapter 273, FS - Tangible Personal Property

Issue Needing Clarification:

- Definition of entities subject to this law don't specify universities. Is a university a state agency for this law?
- Per s. 1001.72(2), FS, university BOTs not part of executive branch of state government, but CH 2005-285 indicates otherwise for "delineation of constitutional lines of authority"
- Per s. 1013.28, FS, universities must dispose of surplus TPP in accord with Ch 273; but s. 1013.28, FS, doesn't address other CH 273 provisions

Recommendation:

 Revise law to clarify applicability of Chapter 273, FS, to universities

Needed Statutory Clarification

Section 1004.28, FS – Direct Support Organizations Issue Needing Clarification:

- AG audit disclosed that a university transferred a large amount of student athletic fees to a DSO, allowing the DSO to expend the fees without university oversight
- We believed this contrary to s. 1009.24(8), FS, which requires universities to retain custody of such fees
- The university believed this was allowed by s. 1004.28, FS, which permits use of university "property" by a DSO. Are such fees "property" as contemplated by s. 1004.28, FS?

Recommendation:

 Revise law to clarify whether fees are property as contemplated by s. 1004.28

Needed Statutory Clarification

Section 1009.24, FS - University Student Fees

Issue Needing Clarification:

- AG audits disclosed that three universities implemented fees not included in those listed in s. 1009.24, FS
- We believe no authority exists for universities to assess fees, and for BOG to approve fees, not listed in s. 1009.24, FS, but three universities believe differently

Recommendation:

• Revise s. 1009.24, FS, to clarify this issue

Needed Statutory Clarification

<u>Section 1009.531, FS – Bright Futures Residency</u> Issue Needing Clarification:

- Residency requirements for Bright Futures same as for tuition purposes (s. 1009.40(1)(a)2., FS)
- Statutes defer to SBE rules for establishing Florida residency documentation requirements
- University residency documentation requirements (BOG Rule 6C-7.005) not consistent with community college requirements (university requirements less stringent)

Recommendation:

 Revise statutes to specify the method by which universities and colleges must verify Florida residency

Questions?	
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FS 112.061

This law provides general travel expense reimbursement guidelines and rates for public officers, employees, and consultants. Section 112.061(2)(a) defines "agency or public agency" for the purpose of establishing which entities are subject to the requirements of Section 112.061. Although it appears that this definition includes community college and university boards of trustees, this is not clearly stated in that Section. Section 112.061(14) does allow certain agencies (counties, special districts, and district school boards) to use per diem and mileage rates different from those prescribed by Section 112.061. Although this is not true for universities and community colleges, which have no authority to reimburse employees for per diem and mileage at rates other than those cited in Section 112.061, some universities are using per diem and mileage rates different than those prescribed by Section 112.061 (for example, see Auditor General report No. 2006-040, Finding 18). Suggest that Sections 112.061(2)(a) and 112.061(14) be revised to clearly indicate applicability to universities and community colleges.

FS 218.403(7)

This law defines "unit of local government" for the purpose of establishing which entities are subject to the requirements of Section 218.415 regarding the investment of local government surplus funds. It is not clear from Section 218.403(7) that the term "unit of local government" includes a community college or university board of trustees. Section 1011.42(5) states that "Investments of university funds shall comply with the requirements of Florida Statutes for the investment of public funds by local government." Although it would seem that the term "requirements of Florida Statutes" would include Section 218.415, this is not clear. Although SBE Rule 6A-14.0765 provides that community colleges may invest as authorized in Section 218.415, this is not clearly stated in Florida Statutes. Suggest that Section 218.403(7) be revised to clarify whether the term "unit of local government" includes universities and community colleges.

FS 273 and 274

These laws establish tangible personal property accountability requirements for most Florida governmental entities. Chapter 273 applies to "any elected or appointed state officer, board, commission, or authority, and any other person or agency entitled to lawful custody of property owned by the state" (see Section 273.01(1)). Chapter 274 applies to "the governing board, commission or authority of a county or taxing district of the state or the sheriff of the county" (see Section 274.01(1)).

When universities were considered part of the executive branch of state government (which currently is not the case per Section 1001.72(2)), they clearly were subject to Chapter 273; however, it currently is not clear as to whether universities remain subject to Chapter 273. Further, according to Attorney General Opinion 71-175, community colleges are subject to Chapter 274; however, it is not clear from Section 274.01(1) that the term "governmental unit" includes a community college board of trustees. Being that boards of universities and community colleges are not state agencies, and are more similar to local governments and district school boards in terms of autonomy, it may be appropriate for universities and community colleges to be subject to Chapter 274 rather than Chapter 273. Suggest that Sections 273.01(1) and 274.01(1) be revised to clarify applicability of Chapters 273 and 274 to universities and community colleges.

FS 287.055

This law establishes procedures for competitively selecting architecture, professional engineering, landscape architecture, or registered surveying and mapping services. It applies to each "Agency," defined by Section 287.055(2)(b) to include "the state, a state agency, a municipality, a political subdivision, a school district, or a school board." It is not clear from this definition that "Agency" includes boards of trustees of universities and community colleges. Suggest that Sections 287.055(2)(b) be revised to clarify the applicability of Section 287.055 to universities and community colleges.

FS 1004.21

This law provides that State universities be constituted as public corporations of the state and be operated by a board of trustees. Agree with SUS comment that this law is duplicative of Section 1001.72, FS. Suggest that Section 1004.21 be deleted, and Section 1001.72 revised, if needed.

FS 1004.25 and 1012.85(1)

These sections of law authorize universities and community colleges, respectively, to pay costs of defending a civil action brought against a university or community college officer or employee. Section 1012.85(1) provides that a community college may recover such costs if the officer or employee is found personally liable because they acted outside the scope of their employment or acted in bad faith, with malicious purposes; however, Section 1004.25 does not include similar language. Agree with SUS comment to make these laws consistent with respect to universities and community colleges. Suggest that Sections 1004.25 or 1012.85(1) be revised to make these laws consistent with respect to universities and community colleges.

FS 1004.28

This law provides for university direct-support organizations (DSOs), and authorizes university boards of trustees to permit DSOs to use of university property, facilities, and personal services. While we believe that student fee collections do not constitute "property" as contemplated by that law, at least one university disagrees with us and believes that student athletic fee collections represent property as contemplated that law (see Auditor General report No. 2006-052, Finding 3). Suggest that Section 1004.28 be revised to clarify this issue.

FS 1009.23(7)

This law authorizes community colleges to establish a separate student activity and service fee, and requires that such fees be used for lawful purposes to benefit the student body in general. In Auditor General report No. 03-010, Finding No. 2, we noted that a large amount of such fees expended statewide by community colleges were used for administrative services function expenditures that are expected in the normal operation of a college, and that it was not clear whether the Legislature intended these fees to be used to supplant such expenditures. During a recent community college audit (report not yet released pending response to preliminary and tentative findings), we noted approximately \$11,000 of such expenditures. Suggest that Section 1009.23(7) be revised to clarify this issue.

FS 1009.23(12)

This law authorizes community colleges to assess user fees and fines, and provides that such user fees and fines cannot exceed the cost of the services provided and can only be charged to persons receiving the service. As noted in Auditor General report No. 03-010, Finding No. 8, fines are charged as penalties to deter certain behaviors and not to recover the cost of services provided. Suggest that Section 1009.23(12) be revised to remove the requirement that fines not exceed the cost of services.

FS 1009.23(12)

This law authorizes community colleges to assess laboratory fees, and provides that such fees cannot exceed the cost of the services provided, and can only be charged to persons receiving the service. State Board of Education Rule 6A-14.054(6) provides further guidance, including the requirement that lab fees may only be charged to cover *unusual* costs. However, there still appears to be some confusion regarding legislative intent regarding lab fees. For example, during a recent discussion with a community college official regarding a finding pertaining to lab fees (see Auditor General report No. 2006-043, Finding 3), the official indicated he believes that such fees can be charged to students for services (e.g., computer lab) that students may and (in the opinion of the college) should use, regardless of whether the student actually uses the lab. It is not clear from the statutory whether this was the legislature intention, or whether the legislature intended that lab fees only be charged to students that are required to use such services. Although clarification regarding this matter in the SBE Rule may be helpful, recent discussion with Florida Department of Education staff disclosed that they would prefer statutory clarification. Suggest that Section 1009.23(12) be revised to clarify this issue.

FS 1009.24

This law contains a comprehensive list of fees a university may charge students. There has been a question as to whether it is lawful for universities to impose fees in addition to those listed herein. While we believe that universities have no authority to impose fees or service charges other than those prescribed in Section 1009.24, and that the Board of Governors has no authority to approve fees/charges not prescribed in Section 1009.24, at least three universities have disagreed with us (see Auditor General report Nos. 2006-040, Finding 24; 2006-052, Finding 4; and 2006-054, Finding 4). Suggest that Section 1009.24 be revised to clarify this issue.

FS 1009.24(8)

This law authorizes universities to assess an athletic fee to students as a component part of tuition and fees, and requires that such fees "be retained by the university and paid into the separate activity and service, health, and athletic funds." While we believe that this provision requires universities to retain custody and control over the fees, at least one university disagrees with us and believes that the fees can be turned over to the university's direct-support organization (see Auditor General report No. 2006-052, Finding 3). Suggest that Section 1009.24(8) be revised to clarify this issue.

FS 1009.53(5)(c)

This law provides that institutions receiving moneys through the Florida Bright Futures Program shall prepare an annual report that includes an annual financial audit conducted by an independent certified public accountant or by the Auditor General. In Auditor General report No. 03-148, under the heading "Other Matters," we noted that as institutions and the Florida Department of Education have become familiar with the laws, administrative rules, and other guidelines governing the Program, our audits since the inception of the Program (1997-98 fiscal year) have indicated that the institutions have implemented policies and procedures to provide for reasonable administration and control of the Program. In that report, we also noted that our audits have disclosed that the institutions generally administer the programs in compliance with controlling laws and have made significant improvements in establishing controls over Program moneys. As indicated by the most recent report (No. 2005-170, the number of institutions for which problems were noted has significantly decreased. Suggest that Legislature consider revising Section 1009.53(5) to require a biennial, rather than annual, audit or to require an audit only when an institution expends more than an established dollar amount.

FS 1009.531

This law establishes student eligibility requirements for the Bright Futures Scholarship program, including a requirement that the student be a Florida resident as defined in Section 1009.40 and State Board of Education rules. Section 1009.40(1)(a)2. states that "Resident status for purposes of receiving state financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21 and rules of the State Board of Education." Section 1009.21(3) states that "An individual shall not be classified as a resident for tuition purposes and, thus, shall not be eligible to receive the in-state tuition rate until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which he or she seeks the in-state tuition rate."

None of these sections of law require universities or community colleges to obtain documentation evidencing Florida residency, or prescribe what documentation would be sufficient to evidence Florida residency. Board of Governors Rule 6C-7.005 (universities) and SBE Rule 6A-10.044 (community colleges) prescribe Florida residency documentation requirements, and an Articulation Coordinating Committee (formed by the universities and community colleges) has promulgated guidelines (Guidelines) for institutions to use in determining residency status. However, the university rules are not consistent with the community college rules, and there exist inconsistencies between the rules and the Guidelines. Also, some universities are currently questioning whether they must comply with old BOR rules such as Rule 6C-7.005 (for example, see Auditor General report No. 2006-036, Finding 17). Including Florida residency verification requirements in statute would help ensure that all universities and community colleges adequately and consistently verify Florida residency for Bright Futures Scholarship recipients. Suggest that Section 1009.531 be revised to specify the method by which universities and community colleges must verify Florida residency. Note: Additional recommendations regarding this issue may be forthcoming after completion of the FY 2004-05 statewide Bright Futures audit (audit report is due to be released by March 1, 2006).

FS 1010.01

This law establishes requirements for district school boards, community colleges, and universities to maintain financial records in accordance with SBE rules. For community colleges, an accounting manual is established and updated by the Community College Council of Business Affairs (COBA) in consultation with the Florida Department of Education (FDOE); however, the community colleges have implemented revised versions of the COBA manual for the last four years without formal incorporation by SBE rule. For universities, an accounting manual is established and updated by the Inter-Institutional Committee on Finance and Accounting (ICOFA); however, there is no provision in law that specifically provides for oversight of this process by FDOE or the Board of Governors (BOG), nor is there an SBE or BOG rule that requires universities to comply with a uniform accounting manual. Currently, the ICOFA accounting manual includes guidance that is inconsistent with generally accepted accounting principles, which has, for several universities currently being subjected to financial audits by the Auditor General, necessitated audit adjustments to properly report financial transactions on the financial statements. Adequate oversight by FDOE or BOG may have prevented these inconsistencies. It would help ensure uniform accounting and reporting for universities and community colleges if there were a requirement for the SBE or BOG to develop a uniform classification of accounts, similar to what is required of the Department of Financial Services for local governmental entities (see Section 218.33(2)). Suggest that Section 1010.01 be revised to include language similar to that included in Section 218.33(2), requiring the SBE or BOG to promulgate rules establishing uniform classifications of accounts and requiring community colleges and universities to comply with such.

FS 1011.06(1), 1011.30, and 1011.40(3)

These laws establish budget requirements for educational institutions, and requires that that the original budget, and amendments thereto, be done in accordance with SBE Rules. Budget laws for district school boards (1011.06(1)) and universities (1011.40(3)) require that expenditures be limited to the amount budgeted under the classification of accounts provided for each fund and to the total amount of the budget. However, neither Section 1011.30 nor any SBE rules include a similar provision for community colleges. Suggest that Legislature consider the need for consistent budgetary requirements for district school boards, community colleges, and universities with respect to prohibitions of budget overexpenditures and, if appropriate, revise Sections 1011.06(1), 1011.30, or 1011.40(3) to provide for such consistency.

FS 1011.411

This law states that "Funds for sponsored research at each university shall be budgeted and expended pursuant to ss. 1010.30 and 1011.42." It is not apparent why Section 1011.411 makes reference to Section 1010.30, which relates to audit requirements. Suggest that the reference to Section 1010.30 be deleted from Section 1011.411, or Section 1011.411 revised to clarify why Section 1010.30 is being referenced.

FS 1013.23

Section 1013.23(3) provides that each university or community college board of trustees may enter into an energy performance-based contract with an energy performance contractor to significantly reduce energy or operating costs of an educational facility through one or more energy conservation measures. Section 1013.23(4) provides that the contract must include a guarantee by the energy performance contractor that annual energy cost savings will meet or exceed the amortized cost of the energy conservation measures. The contractor must provide the College an annual reconciliation of the guaranteed energy cost savings, and is liable for any annual savings shortfall that may occur. There appears to be a need for clarification as to what constitutes the cost of energy conservation measures (for example, see Auditor General report No. 2006-023, Finding 3). Suggest that Section 1013.23 be revised to clarify whether the cost of energy conservation measures includes costs of operating and maintaining the new or modified energy conservation system.

FS 1013.28(2)

This law requires that universities, and district school boards and community colleges, dispose of surplus property in accordance with the procedures established by Chapter 273 and 274, respectively. The only purpose accomplished by this section is to provide for an exception regarding motor vehicles used for driver's education by district school boards. Therefore, reference to universities and community colleges is unnecessary. In addition, reference to Chapter 273 for universities may not be appropriate if the legislature opts to make universities subject to Chapter 274 rather than Chapter 273 (see previous discussion regarding Chapters 273 and 274). Suggest that Section 1013.28(2) be revised to eliminate reference to universities and community colleges.